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Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES

73-281

ANTHONY BARON,
Petitioner,

vs.

[redacted],
Respondent,

CLARE BARON,
Real Party in Interest.

PETITION FOR
WRIT OF CERTIORARI

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SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

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TO THE HONORABLE CHIEF JUSTICE AND TO THE ASSOCIATE JUSTICES OF THE SUPREME COURT:

Petitioner, ANTHONY BARON, requests that this Court issue a Writ of Certiorari to review the opinion of the Court of Appeal of the State of California, Second

Appellate District, Division Two, filed March 15, 1973, Petition for Rehearing denied April 2, 1973; Petition for Hearing in the Supreme Court of the State of California denied May 9, 1973.

Petitioner requests review under Title 28, Section 1257, subsection 3 of the United States Codes, "Final judgments or decrees rendered by the highest court of a state in which a decision could be had may be reviewed by the Supreme Court as follows:

> "(3) By Writ of Certiorari where the validity of a treaty or statute is drawn in question, or where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of or commission held or authority exercised under the United States."

The questions presented to this Court are:

(1) In an action for Dissolution of Marriage, where the rights and interests in title to certain articles of personal property are in issue, does the Trial Court violate Section 1 of the Fourteenth Amendment of the Federal Constitution where the court denies one of the litigants the opportunity to present his case by reason of the Trial Court's undue restriction on the right of cross-examination thereby denying the litigant the opportunity to present his case and defenses constituting a denial of due process of law; and

(2) Where the court is required under state law to make an equal division of the community property of the parties, does the court violate Section 1 of the Fourteenth Amendment of the Federal Constitution and deny the litigant due process of law by adjudicating the rights and interests in the property based upon insufficient evidence to support the findings thereby depriving the litigant of property without due process of law.

Section 1 of the Fourteenth Amendment of the Federal Constitution reads as follows:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." U.S.C.A. Constitution, Amendment 14, Section 1, page 168.

STATEMENT OF THE CASE

Petitioner, ANTHONY ELI BARON and CLARE AVNET were married on December 30, 1967, and separated on March 15, 1970. During the time of the marriage, and prior

separation, the parties resided at 400
ury Lane, Beverly Hills, California.
ring the course of their marriage, Mr.
RON opened an income-generating stock
count with Dean Witter and Company. Mr.
RON's signature was the only one author-
ed on the account. Prior to and during
e course of the marriage, Mrs. AVNET
de gifts to the Petitioner of large sums
money, expensive automobiles and several
eces of art work.

During the course of the marriage, Mrs.
NET also advanced to Mr. BARON either as
loan or in trust, sums of money with
ich Mr. BARON attempted to establish a
oduction company and later an automobile
ency.

At the time of the dissolution of the
rriage, the central issue was the rights
d interests of the parties to property
en held in the name of Petitioner,
THONY BARON.

Mrs. AVNET's position with regard to
ose properties was that they had all been
ans to the Petitioner and that the court
ould declare the property as her separate.

Subsequent to her testimony on direct examination by her counsel, counsel for the Petitioner attempted to cross-examine Mrs. AVNET to show the nature of the transactions in order to establish a uniform series of gifts and in fact to establish that the articles in question were also gifts and that the property should be declared that of the Petitioner herein. The court denied Petitioner's counsel the right to further cross-examine the witness and in the Interlocutory Judgment of Dissolution of Marriage ordered the property be the sole and separate property of Mrs. AVNET.

Petitioner, through his counsel of record, objected to the limitation of the cross-examination and made an offer of proof which was denied by the court. The text of the objections and offer of proof are attached hereto as Appendix "B" and incorporated herein as though set forth in full.

PETITIONER'S ARGUMENT

THE TRIAL COURT IMPROPERLY RESTRICTED CROSS-EXAMINATION OF PETITIONER ON A MATERIAL ISSUE OF THE CASE AND THEREBY DENIED RESPONDENT THE RIGHT TO PRESENT EVIDENCE

On direct examination of Mrs. AVNET, she testified concerning several items which she claimed was given as gifts and several items which she claimed had been given as loans. On cross-examination, counsel for Mr. BARON attempted to prove that in fact the several loans claimed by Mrs. AVNET were actually gifts. That at the time given there was no mention of any obligation on the part of Mr. BARON to repay these gifts and that in fact Mrs. AVNET had voluntarily bestowed these gifts upon Mr. BARON. The Trial Court improperly denied Mr. BARON the opportunity to cross-examine Mrs. AVNET regarding these items. An offer of proof was made with the intent of showing a common scheme and uniform series of gifts by Mrs. AVNET to the Petitioner and the Petitioner's case was predicated upon the fact that all things given to him by Mrs. AVNET were gifts and not loans.

The record clearly shows the attempt by Petitioner to cross-examine Mrs. AVNET regarding material issues of the case (See Appendix "B" attached hereto and incorporated herein as though set forth in full).

By the court's statement in rejecting the offer of proof by Petitioner's counsel, it limited and unduly restricted the cross-examination. These restrictions on cross-examination of Mrs. AVNET denied Petitioner the right to bring out the matters and in effect denied him the opportunity to present his case.

It has been stated that due process is a matter of fundamental fairness and that the test as to whether a party has been afforded due process of law is one of fundamental fairness in the light of the total circumstances. Sigma Chi Fraternity v. Regents of the University of Colorado (1966) 258 F. Supp. 515, Watson v. Patterson (1966) 358 F.2d 297.

In the situation presented, the denial of the right to cross-examine the opposing party on the issue of ownership of properties subject to the disposition of the court is obnoxious to the ideal of fairness

ich is part and parcel of the due pro-
ss clause of the Fourteenth Amendment.
e process of law as discussed in United
ates ex rel. Montgomery v. Ragen (1949)
F. Supp. 382, means fair play and is
at process of impartial law which is
nding because it is right.

In the instant situation, the deprivation of the right to cross-examine the witness and thereby produce evidence material to the proper disposition of the case, is sufficiently shocking to our universal sense of justice and fundamental fairness as to be considered a denial of due process.

It is generally recognized that due process of law deals essentially with the denial of fundamental fairness by reason of the restriction on Petitioner's cross-examination, Mr. BARON was denied the right to present evidence on his behalf and the said denial was so fundamentally unfair as to be a deprivation of due process of law.

THE DECISION OF THE TRIAL COURT REGARDING THE OWNERSHIP OR CERTAIN ARTICLES OF PERSONAL PROPERTY WAS BASED UPON INSUFFICIENT EVIDENCE TO SUPPORT THE FINDINGS AND BY REASON OF SUCH INSUFFICIENT EVIDENCE THE TRIAL COURT DEPRIVED PETITIONER OF PROPERTY WITHOUT DUE PROCESS OF LAW

The finding of the Trial Court that the ownership of certain personal property then in the name of ANTHONY BARON was actually the property of Mrs. AVNET is unsupported by sufficient evidence brought out at the trial. The evidence received by the court was uncontradicted that stock accounts with Dean Witter and Company were in the name of ANTHONY BARON. It was also uncontradicted that Mr. BARON was the only party entitled to sign on the account and further even Mr. SAFFRO, witness for Mrs. AVNET stated that there was no reason preventing Mr. BARON from withdrawing or closing the entire account at any time. All of the evidence received at the Trial Court indicated that dominion and control over the two accounts were under Mr. BARON's name and were exercised solely by Mr. BARON. The only evidence submitted with regard to

ownership of the accounts was that the
nds used to open the accounts were loans
om Mrs. AVNET to the Petitioner. Assum-
g without conceding that in fact the
ney with which the accounts were opened
s traced to a loan, the tracing of the
an in and of itself is not sufficient to
tablish ownership of the accounts in Mrs.
NET. The tracing of the loan is merely
fficient to establish a cause of action
r the amount of the loan against Mr.
RON and the determination by the Court
at the accounts themselves were in fact
ned by Mrs. AVNET constitutes a denial of
operty without due process of law in
olation of Section 1 of the Fourteenth
endment of the Federal Constitution, in
at no evidence having been admitted with
spect to any ownership interest in the
count, Petitioner was deprived of prop-
ty without due process of law.

It is generally recognized that the due
ocess clause of the Fourteenth Amendment
the Federal Constitution is intended to
otect the individual from arbitrary acts
Government as was stated in Patton v.
ate of North Carolina (1966), 256 F. Supp.

225, aff'd. 88 S. Ct. 818, 390 U.S. 905, that:

> "Protection of the individual from arbitrary action is the very essence of due process of law."

Petitioner contends that the act of the Court in distributing the property where there was insufficient evidence upon which to make that distribution was an arbitrary and capricious act which in fact deprived the Petitioner of vested rights in personal property in deprivation of his Constitution rights under the Fourteenth Amendment.

Again, as stated in United States v. Yount (1920) 267 Fed. 861, the due process of law by which Congress is limited in Amendment Five and the states by this Amendment, is equivalent to the law of the land and is intended to protect the citizen against arbitrary action and to secure to all persons equal and impartial justice under the law.

CONCLUSION

Under the circumstances of the case, he Trial Court's denial of Petitioner's ight to present evidence by unduly limiting his cross-examination and by the capicious and arbitrary order depriving the etitioner of property in which he had a ested interest, constitutes a violation of the fundamental fairness demanded by Section 1 of the Fourteenth Amendment of the Federal Constitution, and Petitioner prays that this Court issue a Writ of Certiorari to review the proceedings.

Respectfully submitted,

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